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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,298	07/12/2004	Nicholas Daniel Kovich	6065US	8140
30173	7590	12/18/2007		
GENERAL MILLS, INC. P.O. BOX 1113 MINNEAPOLIS, MN 55440			EXAMINER WEINSTEIN, STEVEN L	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 12/18/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/501,298

**Applicant(s)**

KOVICH ET AL.

**Examiner**

Steven L. Weinstein

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Claims 1-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gornet (D376,893) in view of Gornet (D393,136), Gornet et al (D369,451) and Beehler (5,993,871), further in view of Bank (D277,234), Ruiz (5,002,783), Stickle (D335,758), Kittleson (D339,899), Ito (5,298,273), Hutchinson (D251,396), Alsbrook (5,567,455), Biggs et al (5,709,898), further in view of Richards (D278,199), and Putt (D282,338). All of the claims are also rejected over the same group of references using Beehler as the primary reference, essentially for the reasons given in the Office action mailed 5/30/07.

Claim 1 now recites that the first and second sidewall are interconnected only by a substantially flat base. This recitation is meant to differ from Gornet('893), which discloses tortilla shells with sides which do not interconnect only by the flat base. That is, Gornet ('893) discloses four sides and not just two sides. However, the art taken as a whole discloses edible containers wherein the containers contain either four or two sides, including the more common taco shell which has two sides. In fact Beehler discloses the equivalency of providing either a two or four sided taco shell. Therefore, to modify Gornet ('893) and eliminate the short opposing wall to provide a more commonly recognized taco shell would have been an obvious matter of choice and/or design in view of the art taken as a whole. Claims 5,14,18,23,29, and 35 also contain variations of the new recitation and are rejected for the same reasons as stated above.

All of applicants' remarks filed 10/3/07 have been fully and carefully considered but are not found to be convincing. It is first noted that applicants' invention is directed to modifying the shape of taco shells, which applicants' disclose have rounded bottoms, so that they are capable of self-standing. The modification is to substitute for the

rounded bottom, a flat base. The art taken as a whole teaches that not only are flat bottomed edible containers notoriously conventional, including taco shells, but they also teach what amounts to be common sense that a flat base, sufficiently proportioned, will allow any structure edible or inedible to be self-standing. It is basic physics that a structure is more stable if the base is flat and the center of gravity is within or as close to the footprint of the structure. Thus, the particular dimensions of a structure to impart a self standing capability is seen to be nothing more than a routine determination, obviously determinable through mathematical or empirical processes. For example, the wider the base, the more stable the structure. The taller the structure, the less stable the structure, which would tend to then require a wider base. There is nothing magic in these concepts, nor in the fact that the product is recited as a taco shell. It is urged that it would not have been obvious to modify Gornet ('893) and employ the more conventional two sided taco shell. As pointed out above, since both two and four sided shells are known, it would have been obvious to modify Gornet ('893) and provide the flat bottom and eliminate the two short sides to provide the more conventional shell, especially when the art taken as a whole discloses various edible containers with either 2 or 4 sides, including either 2 or 4 sides in the same patent (e.g. Beehler). It is urged that Beehler teaches away from a flat base and thus cannot be modified to provide a flat base. This urging is not convincing. Beehler discloses that prior to his invention, it was known to employ flat based taco shells (col. 1, para. 4). Beehler discloses that the prior art flat based taco shells had several problems, including mechanical problems due to sharp corners at the base of the shell as well as instability due to the fact that the flat

base had surface variations. Beehler attempts to solve the problems of the prior art flat bottomed taco shells with a different configuration. However, as noted in the last Office action, the art taken as a whole discloses providing a curvature between the sidewall and the base. As for the surface variation causing instability problems, given a sufficiently large flat base, as evidenced by the art taken as a whole, as well as common sense, such instability problems would be eliminated. For example, whether the Gornet references have four sides or not, their flat base allows the edible container to be self-standing. Similarly for the other edible containers. Also, rather than teaching away from the invention, Putt and Richards teach that if the base is flat, container type structures are self standing; structures which have the same or similar shape as that of taco shells. These supports are provided for taco shells that have the more traditional rounded bottom, but they also indicate that if one shapes the taco shell so that it has a flat bottom with appropriate dimensions it would be self-standing.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M.-2:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Steve Weinstein  
STEVE WEINSTEIN  
PRIMARY EXAMINER 1794  
12/14/07